

In the Matter of License No. Z-851199 ~~Marshall Master's Document No.~~

Issued to: Charles McDevitt

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1281

Charles McDevitt

This appeal has been in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 21 October 1960, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania suspended, on probation, Appellant's seaman documents upon finding him guilty of negligence. The specification found proved alleges that while serving as Master on board the United States MV ATLANTIC No. 5 under authority of the license above described, on or about 3 December 1958, Appellant navigated his vessel into collision with the properly anchored United States Army JET PROBING BARGE No. 1 outside the main ship channel on the Delaware River.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

Both parties introduced in evidence the testimony of witnesses and various exhibits.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of two months on six months' probation.

The decision was served on 27 October 1960. The notice of appeal was timely filed on 22 November 1960. The review on appeal has been held in abeyance due to counsel's expressed intention to file a brief in support of the appeal. No such brief has been received.

FINDINGS OF FACT

On 3 December 1958, Appellant was serving as Master on board the United States MV ATLANTIC NO. 5 and acting under authority of his license.

The ATLANTIC is an uninspected diesel tugboat of 192 gross tons owned by the Atlantic Refining Company. It is the policy of the company to require a license (as master, mate or pilot) as a prerequisite for employment as master of their diesel tugboats.

On the evening of 3 December 1958, the ATLANTIC NO. 5 departed Burlington, New Jersey for Philadelphia and proceeded down the Delaware River with ATLANTIC BARGE No. 28 in tow alongside to starboard. Fog set in and proper signals were sounded.

The U. S. Army JET PROBING BARGE No. 1 was anchored farther downstream near Delanco, New Jersey, where the marked channel was about 350 feet wide. The barge was headed downstream and was outside of the downbound, left-hand side of the channel. She was anchored with four anchors from the four corners of the barge with two to starboard and two to port. The barge was also secured by one spud forward and one aft. The two anchor buoys on the starboard, channel side were lighted by kerosene lanterns. The two anchor buoys away from the channel on the port side of the barge were not lighted. The barge itself had a 360 degree light located 30 feet high on the mast and one light at each of the four corners of the deckhouse. The barge was not in operation and one man was on board as a watchman.

The lights of the JET PROBING BARGE appeared as a mass of white lights dead ahead when they were sighted at about 2200 by the bow lookout on the barge secured to the starboard side of the ATLANTIC No. 5. The lookout reported the lights to Appellant and he sounded one long blast to pass to starboard of the PROBING BARGE. When there was no answer, Appellant directed the course of the tugboat to the port side of the anchored barge because there were no lights to indicate that there were anchors out to port. The watchman on the barge shouted that the tugboat was going out of the channel. She was then parallel with the anchored barge and between the latter and the shore. Upon hearing the warning, Appellant maneuvered the tugboat in a tight turn to the right but struck the submerged cable leading to the after port anchor as the tugboat was swinging to head upstream. The tugboat drifted against the anchored barge, port to port, and damaged the barge. There were no injuries.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Coast Guard lacks jurisdiction to conduct these proceedings because the general employment policy of the Atlantic Refining Company cannot be relied on to establish that Appellant was acting under the authority of his license. The sole cause of the collision was the fault of the anchored barge. In any event, the order is excessive.

APPEARANCE: Miles Warner, Esquire, of Philadelphia, Pennsylvania, of Counsel.

OPINION

With respect to the jurisdictional question, it has consistently been the opinion of the Commandant that a seaman is acting under the authority of his license or document, as required by 46 U.S. Code 239, if possession of such a license or document is a condition of employment. Commandant's Appeal Decisions Nos. 491, 700, 824, 1030. Although the ATLANTIC No. 5 is an

uninspected tugboat not required by law to carry licensed or documented personnel, there is jurisdiction in this case because, in accordance with the policy of the owner of the tugboat, Appellant would not have been employed as the Master if he had not had a license. Consequently, it is considered that he was acting under the authority of such license.

Concerning the merits of the case, I do not agree that any fault attributable to the anchored barge absolves Appellant from blame. The lights from the barge and her two starboard anchor buoys were clearly visible and there was ample room for the tugboat to pass without leaving the marked channel. There is no reason why the barge would have anchored in the channel when she was not in operation. The only logical explanation for Appellant's navigation of the tugboat is that he thought the barge was anchored in the middle of the channel because he had seen her in that position earlier in the day while the barge was in operation. The indication is that, in the fog, Appellant did not know where the tugboat was heading relative to mid-channel when the lights of the anchored barge came into sight. This is supported by the testimony of the lookout that the lights were first seen dead ahead rather than on the port bow as they would have been if the tugboat had been on a course to remain in the middle of the channel.

For these reasons, it is my opinion that Appellant was guilty of negligent navigation. The probationary suspension imposed by the Examiner is not excessive for this offense.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 21 October 1960, is AFFIRMED.

J. A. Hirshfield
J. A. HIRSHFIELD, VADM, USCG
Acting Commandant

Signed at Washington, D. C., this 12th day of January 1962.